S.B.Civil Second Appeal No.107/2004

Nema Ram & Ors. vs. Mota Ram.

Date : 2.5.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. SC Maloo, for the appellants.

Mr. R Joshi, for the respondent.

- - - - -

Heard learned counsel for the parties.

Learned counsel for the appellants wants to withdraw the application filed under Order 7 Rule 11 C.P.C. in view of the fact that the appellants have already submitted written statement before the trial court and the appellants have taken the plea in the written statement which they have taken in the application under Order 7 Rule 11 CPC.

The first appellate court after allowing the appeal of the plaintiff/respondent remanded the matter back to the trial court to decide the application under Order 7 Rule 11 CPC afresh after taking into consideration the law on Order 7 Rule 11, Order 7 Rule 10 and Order 14 CPC.

In view of the above facts and in view of the request of the appellants, the appellants are permitted to withdraw the application under Order 7 Rule 11 CPC so that the trial court may apply its mind to decide the issue raised by the appellants in their application under Order 7 Rule 11 CPC

and in the written statement by giving a decision in the suit itself.

In view of the above, the application of the appellants under Order 7 Rule 11 CPC is dismissed with liberty to the appellants to agitate the issue in the main suit.

Consequently, this appeal is dismissed as having become infructuous.

(PRAKASH TATIA), J.

S.Phophaliya